

**BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD**

In the Matter of:

COLLEEN McINTYRE,

Respondent.

No. 01-110

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Colleen McIntyre, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through SUSAN HARRIS, Executive Director. The following stipulated facts, conclusions, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation.

Section 1: PROCEDURAL FACTS

1.1. On October 2, 2001, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Colleen McIntyre, an employee of the State of Washington, Washington State Patrol (WSP), used SCAN, SCAN Plus, and a state-owned cellular telephone to make personal telephone calls. The referral also included allegations that Ms. McIntyre used a state-assigned vehicle to commute between her residence and her official workstation in excess of WSP regulations and that she ran personal errands during work hours. The Executive Ethics Board reviewed this referral and issued a complaint on April 14, 2003.

1.2. The Board is authorized under RCW 34.05.060 to establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under

the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

1.3. Colleen McIntyre understands that if Board staff proves any or all of the alleged violations at a hearing, the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to \$5,000, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

1.4. Colleen McIntyre recognizes that the evidence available to the Board staff is such that the Board may conclude Ms. McIntyre violated the Ethics in Public Service Act. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order set forth below.

1.5. Colleen McIntyre waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2) which provides in part:

The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or respondent does not agree to the board's proposed modification to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussion shall not be admitted into evidence at a subsequent public hearing.

1.6. If the Board accepts this stipulation, the Board will release and discharge Colleen McIntyre from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in the complaint in this matter, subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and conditions of the agreed order. Ms. McIntyre in turn agrees to release and discharge the Board, its officers,

agents and employees from all claims, damages, and causes of action arising out of this complaint and this stipulation and agreed order.

1.7. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between Colleen McIntyre and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

1.8. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

1.9. If the Board rejects this stipulation, or if Colleen McIntyre does not accept the Board's proposed modification(s), if any, Ms. McIntyre waives any objection to participation at any subsequent hearing by any Board member to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Ms. McIntyre understands and agrees that this proposed stipulation and information obtained during any formal settlement discussions held between the parties shall not be admitted into evidence at a subsequent public hearing, unless otherwise agreed by the parties.

Section 2: FINDINGS OF FACT

2.1. When the complaint in this matter was filed, and at all times material hereto, Colleen McIntyre was employed by WSP.

2.2. Ms. McIntyre's SCAN and state cellular telephone records from September 2000 to April 2001 revealed 632 calls. Ms. McIntyre asserts that many of the calls were business-related, or resulted from a change in duty hours or travel plans. Ms. McIntyre offered to pay for the telephone calls that WSP found to be personal in nature.

2.3. On May 30, 2001 Ms. McIntyre provided the WSP with a statement regarding the telephone use that occurred from September 2000 to April 2001. A sampling of the telephone calls made on the state cellular telephone during this time period is listed below:

- 69 calls to her husband's work number and 30 calls to his cellular phone
- 11 calls to her personal cellular phone (possibly to the babysitter/nanny)

- 6 calls to Downtown Designs (a hair salon)
- one 17-minute call to a friend watching her daughter after school (where her daughter may have got on the phone for further conversation)
- 17-minute call to a family that lives in her neighborhood; called to cancel a meeting and the phone call went longer.
- 2 phone calls to other families regarding changes of plans
- 4 calls to her family physician
- 3 telephone calls in November regarding a soccer meeting she would not be able to attend.
- 2 calls to Flipper Sportswear regarding items for the soccer team
- 1 call to Flipper Sportswear's fax machine number
- 2 calls to her daughter's friend
- March – two calls to a soccer coach
- March – Call to her neighbor
- October – 5 calls to car pool member for soccer
- Calls to her orthodontist

Ms. McIntyre testified and maintains that the calls (including those listed) that she could clearly recollect were made as business or “emergency” calls under regulations as it was utilized in practice at the time they were made. She also testified that she could have made some errors in identifying the calls, because of the quantity of calls (and their remoteness in time) that she was asked to identify. The WSP adduced no specific proof to the contrary, but stated that the number of calls caused them to believe not all could have been business related.

2.4. During the period in question, WSP's telephone communication policy read as follows: “... Department telephones, cellular telephones, and credit cards are for official state business only, except for calls of an emergency nature.” WSP practice permitted “change of plans” calls to be made as work related “emergencies” under the regulation.

2.5. After Ms. McIntyre was charged by the WSP for violating the telephone communications policy, this practice was formalized and a new telecommunications policy became effective allowing employees to call home in the case of an emergency, a change in travel plans or a change in duty hours.

2.6. The SAO investigated the allegations that Ms. McIntyre used a state-assigned vehicle to commute between her official residence and the official workstation in excess of WSP

regulations. The SAO determined that there was no reasonable cause to believe that improper governmental action had occurred when Ms. McIntyre used the state vehicle for commute purposes although the SAO did determine that Ms. McIntyre violated agency policy. The referral also indicated that the SAO could not determine whether there was reasonable cause to believe that Ms. McIntyre ran personal errands during work hours. No evidence revealing anything contrary to the SAO's findings regarding these two allegations has been found.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Colleen McIntyre and over the subject matter of this complaint.

3.2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

3.3. The Ethics in Public Service act prohibits a state employee using state resources for their personal use. RCW 42.52.160(1) states:

No state officer or state employee may employ or use any person, money or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

3.4. Based on Findings of Fact 2.1 through 2.3, Colleen McIntyre used her state cellular phone in violation of RCW 42.52.160 when she used the state telephone system to make personal telephone calls that were not related to a change in travel plans or change in duty hours.

3.5. No evidence was found to substantiate any of the other allegations as alleged in the complaint.

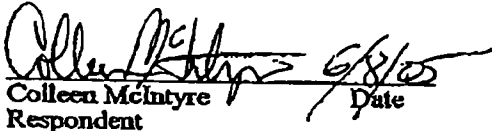
3.6. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors. It is an aggravating factor that Ms. McIntyre had significant official, management or supervisory responsibility. It is a mitigating factor that Ms. McIntyre offered to pay for the personal telephone calls.

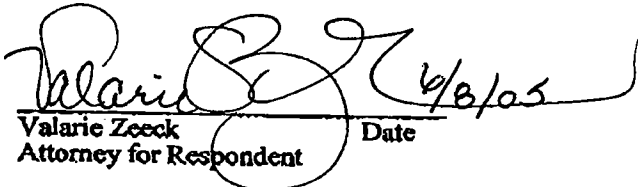
Section 4: AGREED ORDER

4.1. Colleen McIntyre will pay a civil penalty in the amount of seven hundred fifty dollars (\$750.00). The Board agrees to suspend two hundred fifty dollars (\$250.00) of the civil penalty on the condition that Colleen McIntyre complies with all terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW. The \$500.00 due on the civil penalty is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board.

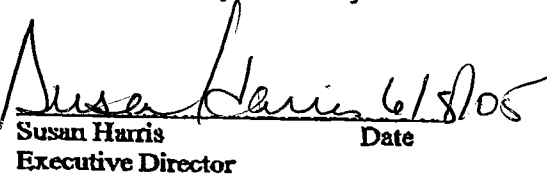
CERTIFICATION

I, Colleen McIntyre, hereby certify that I have read this Stipulation and Agreed Order in its entirety. I knowingly and voluntarily waive my right to a hearing in this matter, and I fully understand and voluntarily agree to this Stipulation.


Colleen McIntyre
Respondent Date


Valarie Zeeck
Attorney for Respondent Date

Stipulated to and presented by:


Susan Harris
Executive Director Date

II. ORDER

Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

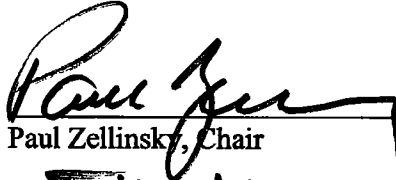
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ACCEPTED in its entirety;

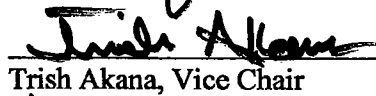
REJECTED in its entirety;

MODIFIED. This Stipulation will become the Order of the Board if the Respondent approves* the following modification(s):

DATED this 10th day of June 2005.



Paul Zellinsky, Chair



Trish Akana, Vice Chair



Marilee Scarbrough, Member

Evelyn Yenson, Member



Judith Golberg, Member

* I, Colleen McIntyre, accept/do not accept (circle one) the proposed modification(s).

Colleen McIntyre, Respondent

Date

Valerie Zeeck, Attorney

Date